



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2005

Mr. James G. Nolan
Open Records Attorney
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2005-03744

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223149.

The Comptroller of Public Accounts (the "comptroller") received a request for various categories of information relating to the Annual Property Value Study conducted by the comptroller's Property Tax Division. You indicate that some information will be released to the requestor. You claim that the submitted information is not subject to disclosure under the Act. Alternatively, you claim that the comptroller is prohibited from making copies of the requested information pursuant to section 552.101 of the Government Code in conjunction with federal copyright laws. You also state that the submitted information may contain proprietary information that is subject to exception under the Act, but you assert no arguments and take no position as to whether the information is so excepted from disclosure. Under section 552.305 of the Government Code, you notified CoStar Realty Information, Inc. ("CoStar") of this request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor.¹ We also

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

received arguments from CoStar. We have considered all of the submitted arguments and have reviewed the information you submitted.²

Both the comptroller and CoStar argue that the submitted information is not subject to disclosure under the Act because it is commercially available to the requestor. Section 552.027 of the Government Code provides:

- (a) A governmental body is not required under [the Act] to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.
- (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.
- (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. CoStar asserts that the submitted reports "are commercially available and can be obtained by the requestor through the CoStar COMPS Express service" that is accessible via the Internet. Based on this representation and the comptroller's indication that the reports were purchased or acquired by the comptroller for research purposes, we conclude that the submitted reports fall within the scope of section 552.027 of the Act and need not be released in response to this request. As our conclusion is dispositive, we need not address any remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the comptroller to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

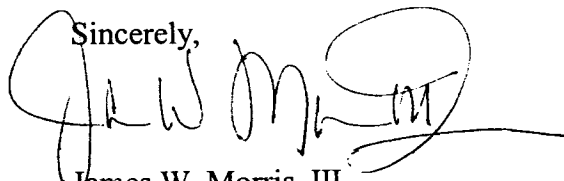
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JW Morris III', with a stylized flourish extending from the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 221349

Enc: Submitted documents

c: Mr. Mark Castleschouldt
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(w/o enclosures)

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